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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

MAHAFKEY, KELLY J

ART UNIT

PAPER NUMBER

1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/22/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/810,461

Applicant(s)

STAWSKI ET AL.

Examiner

Kelly Mahafkey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21, 30, 31 and 33-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21, 30, 31 and 33-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

In view of the Appeal Brief filed on December 14, 2006, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below. Claims 1-21, 30, 31, and 33-36 remain pending in the application. Any inconvenience to the applicant is regretted.

To avoid abandonment of the application, appellant must exercise one of the following two options: (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or, (2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid. A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below.


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SUPERVISORY PATENT EXAMINER
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Milton Cano

Claim Rejections - 35 USC § 102

The previous 102(b) rejection of claims 1-20, 30, 31, and 33 over Hanke (WO 97/06695) have been withdrawn.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 4-11, 13-20, 30, 31, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanke (WO 97/06695).

Regarding claim 1, Hanke teaches of a boiled hard candy product that includes two distinct and discrete regions, a coolant region and flavor region. Refer specifically to Abstract, Page 3 Paragraph 3, Page 8 Paragraph 1, and Page 10 Paragraph 3. Hanke discloses that the outer coating composition is continuous and enrobes a core composition to create a centre-filled candy. Hanke teaches that the jacket can comprise of the coolant or flavor region and that the core can comprise the coolant or flavor region, as long as the candy composition includes at least one coolant region and at least one flavor region. Refer specifically to Page 3 Paragraphs 3 and 4. Hanke teaches the coolant composition as the jacket and the flavoring composition as the core (Page 10 paragraph 3, page 12 paragraph 2, page 13 paragraph 3, and Example 2). Note: The rejection below is focused on Hanke's embodiment in which the outer layer is composed of the coolant composition and the core is composed of the flavor composition. Furthermore, one of ordinary skill in the art at the time the invention was made would have been motivated to select the embodiment, as taught by Hanke, in which the jacket was composed of the coolant composition and the core was composed of the flavoring composition, in order to first experience the physiological effects of the coolant (Page 7 paragraph 3) so that the flavor composition would be more greatly experienced. Thus, based on the above discussion, Hanke teaches that the coolant composition or jacket contains 0.01-15%, preferably 0.5-10% of the cooling agent and minor levels of flavoring ingredients (Page 7 Paragraphs 3 and 4, Page 8 Paragraph 1). Hanke teaches that the flavor composition or core contains preferably 0.4-1.5% flavoring and trace amounts of cooling agents (Page 10 Paragraphs 2 and 3). Therefore, the level of cooling agents in the jacketed or outer layer is greater than the level of cooling agents in the flavor composition or core in the candy composition, as taught by Hanke.

Regarding claim 4, Hanke teaches that the carrier composition which is utilized to add flavoring and cooling agents is typically of the same form and composition prior to the addition of one or more flavoring and cooling agents (Paragraph 10 Page 3).

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Regarding claim 5, Hanke discloses that the jacket or coolant composition can comprise 0.1-0.15% of the cooling agent which can include menthol (Page 1 Paragraph 2 and Page 8 Paragraph 2).

Regarding claim 6, specifically the range of 0.01-2% flavoring agent in the candy, Hanke discloses that the amount of flavoring agent employed in the product is normally a matter of preference subject to factors such as flavor type, base type, and strength desired (Page 10 Paragraph 3). Hanke teaches that the core or flavoring composition to preferably contains 0.4-1.5% of the flavoring agents and the jacket or coolant composition contains minor levels of flavoring agents (Page 8 Paragraph 1). One of ordinary skill in the art would expect the amount of flavoring in the candy composition as taught by Hanke (0.4-1.5% + minor amounts) to fall within the range of 0.01-2%, as instantly claimed. Furthermore, it would have been obvious to one skilled in the art at the time the invention was made to vary the amount of flavoring in the confection depending on the preferred flavor type, base, and desired strength in view of Hanke (Page 10 Paragraph 3).

Regarding claim 7, specifically the range of 0.001-1% cooling agent in the candy composition, Hanke teaches that the coolant composition or jacket contains preferably 0.5-10% of the cooling agent and that the flavor composition contains trace amounts of cooling agents (Page 10 Paragraph 2 and Page 7 Paragraph 3). One of ordinary skill in the art would expect the amount of cooling agent in the candy composition as taught by Hanke (0.5-10% + minor amounts) to fall within the range of 0.001-1%, as instantly claimed. Furthermore, it would have been obvious to one skilled in the art at the time the invention was made to vary the amount of cooling agent in the confection depending on the preferred strength of coolant organoleptic properties in the final composition.

Regarding claims 8-11, (Page 8 Paragraph 1) Hanke teaches that the carriers are chosen based upon the particular form that the confectionary products take. Hanke teaches that the confectionary product's base that is used to make both the jacket and the core can be sugar-free or sugar based and can consists of sugars, sucrose, and xylitol. Refer specifically to Page 8 Paragraph 1 and Page 9 Paragraph 3.

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Regarding claims 13, 14, and 15, Hanke discloses that suitable cooling agents include carboxamides, menthol, eucalyptus, menthane esters and methane ethers and mixtures thereof (Page 5 Paragraph 3). Hanke teaches that physiological cooling agents, such as 3-l-menthoxypropane-1,2 diol, N 2 3-trimethyl-2-isopropyl butanamide, and substituted p-menthane carboxamides can be utilized from 0.01-15% of the coolant composition. Refer specifically to Page 5 Paragraphs 3 and 4, Page 6 (All), Page 7 (All), and Page 8 Paragraph 2.

Regarding claims 16-18, Hanke discloses that colorant can be added to the confection. In Example 1 Pages 13-14, Hanke teaches the core and outer layers both contain the same color as recited in claims 16 and 17. In Example 2 Pages 14-15, Hanke teaches that only the core contains coloring. Therefore, in Example 2, since the core contains color and the outer layer does not, the core and the outer layer are different colors as recited in claim 18.

Regarding claims 19 and 20, Hanke discloses that the coolant composition or jacket contains 0.01-15%, preferably 0.5-10% of the cooling agent and minor levels of flavoring ingredients (Page 7 Paragraphs 3 and 4, Page 8 Paragraph 1). Hanke discloses that the flavor composition or core contains preferably 0.4-1.5% flavoring and trace amounts of cooling agents (Page 10 Paragraphs 2 and 3). Hanke, therefore, teaches that the level of cooling agents in the jacketed or outer layer is greater than the level of cooling agents in the core. Hanke discloses that suitable cooling agents include menthol (Page 5 Paragraph 3). One of ordinary skill in the art would expect that the ratio of the amount of menthol in the coolant composition or jacket to amount of menthol in the flavor composition or core to be greater than 1.5:1 as recited in claim 19 and greater than 2:1 as recited in claim 20.

Note: As recited in claims 18 and 19, any amount of menthol in the jacket to the amount of menthol in the core above 1.5:1, including an infinite ratio would read upon the claims as currently recited.

Regarding claims 30 and 31, Hanke discloses (Page 3 Paragraphs 3 and 4) that the outer layer or jacket may be continuous (i.e. enrobing the entire core) to create a

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centre-filled candy. Thus, one of ordinary skill in the art would expect the jacket as taught by Hanke to enrobe more than 80% (i.e. substantially all) of the core.

Hanke, however, does not explicitly teach a two layer candy with both a hard candy shell and a hard candy core as recited in claim 1 and the elongated shape of the candy as recited in claim 34.

Regarding the two layer hard candy as taught by Hanke consisting of a hard candy shell and a hard candy core, Hanke teaches:

- A two layer candy composition (Page 3 paragraphs 2-4);
- The two layer candy composition is a center-filled candy with a continuous coating (Page 3 paragraphs 2-4);
- The candy composition can take various forms, including a hard and soft candies, chewing gum, and pastilles (Page 3 paragraphs 2-4);
- In an alternative embodiment, the confectionary coating is a crystalline coating (Page 9 paragraph 3 and Page 10 paragraph 3)
- The confectionary products are preferably in the form of lozenges (Page 8 paragraph 1); and
- The carriers for both candy layers are typically of the same form and of the same general composition (Page 10 paragraph 3).

Furthermore, it was known at the time the invention was made

- A “lozenge” is defined (by American Heritage Dictionary of the English Language, Fourth Edition (2000)) as “A small, medicated candy intended to be dissolved slowly in the mouth to lubricate and soothe irritated tissues of the throat.”

Since a preferred embodiment of Hanke is for the two layer center filled candy to be in the form of a lozenge and since a lozenge is defined as dissolving and lubricating when ingested, one of ordinary skill in the art at the time the invention was made would have been motivated to chose the hard candy embodiment as taught by Hanke for the final product. It is noted that one of ordinary skill in the art at the time the invention was made would not expect the other embodiments as taught by Hanke, including soft candies, chewing gum, pastilles, or crystalline sugars, to dissolve and lubricate as well

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as a hard candy. One would have been further motivated for the center filled candy to be composed of both a hard candy shell and a hard candy core, because Hanke teaches that the carriers for both candy layers are typically of the same form and of the same general composition as stated above.

Regarding claim 34, the elongated shape of the candy, it was known in the art at the time the invention was made for hard candies to be in an elongated shape. It would have been obvious to one skilled in the art at the time the invention was made to have made the candy any shape depending on the desired mouth feel. To chose a particular shape would not impart a patentable distinction to the claims absent any unexpected evidence and/or arguments to the contrary.

Claims 2, 3, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanke (WO 97/06695) in view of Luhadiya (WO 97/03569).

Hanke teaches of a jacketed hard candy with a hard candy core and a hard candy jacket as discussed above. Hanke teaches, in an example, that the coolant composition or outer layer comprises 5-15% of the composition and therefore, the core containing the flavoring comprising 85-95% of the composition (Page 13 Paragraph 3). Hanke's example, however, is not explicitly directed to the core and outer layer percentage of a hard candy shell and a hard candy core. Luhadiya teaches of a jacketed hard candy with a hard candy core and a hard candy jacket. Luhadiya teaches that the ratio of the core: casing is within the range of 10:90 to 90:10. Luhadiya teaches that the amount of casing depends on the size of the core. Refer specifically to Summary of the Invention (page 2) and page 4 paragraph 7. Thus, as stated above:

- Hanke teaches of a two layer candy;
- Hanke teaches of a two layer candy with a hard candy core and a hard candy jacket;
- Hanke teaches that the two layer candy is composed of 5-15% jacket and 85-95% core;

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- Luhadiya teaches of a two layer candy with a hard candy core and a hard candy jacket where the candy includes 10-90% jacket and 10-90% core; and thus,
- It was known in the art at the time the invention was made for a jacketed hard candy to contain 10-90% of an outer layer and 10-90% of a core, as instantly claimed.

Since, Hanke does not specifically teach the ratio of a hard candy shell to a hard candy core, one would have been motivated to look to the jacketed hard candy art, such as Luhadiya, for a known ratio of hard candy shell to hard candy core. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the ratio of the hard candy core to the hard candy shell at the ratio of core to casing from 10:90 to 90:10 as taught by Luhadiya. It is further noted that the ratio of core to casing as taught by Hanke falls within the range of core to casing as taught by Luhadiya, and as instantly claimed.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hanke (WO 97/06695) in view of Coia (EP 0431376 A1).

Hanke teaches of a jacketed hard candy with a hard candy core and a hard candy jacket as discussed above. Hanke discloses that the hard candy formulation can include sugar and/or sugar substitutes. (Page 1 Paragraph 3). Hanke, however, is silent to the candy composition as containing hydrogenated isomaltose as recited in claim 12.

Coia teaches of a hard candy confection comprised of hydrogenated isomaltose an active ingredient, and a flavoring agent which dissolves more slowly than similar formulations based on sugar, rendering a more suitable candy for dispensing an active ingredient, such as a cooling agent, over an extended period of time (Abstract and Example 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include hydrogenated isomaltose in the candy composition as taught by Hanke in order to make the candy as taught by Hanke more suitable for dispensing the cooling agent in view of Coia.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hanke (WO 97/06695) in view of Klacik et al. (US 4452825).

Hanke teaches as the hard candy product as homogeneous, however is silent to the hard candy product as clear (Page 10 Paragraph 3).

Klacik et al. (Klacik) discloses that it is desirable to have traditional or ordinary properties of a candy when making a candy, such as a clear composition and good texture (Column 1 lines 5-13). It would have been obvious to one skilled in the art at the time the invention was made to have modified the hard candy composition as disclosed by Hanke to include a clear composition in view of Klacik. One would have been motivated to do so because a clear composition is one of the traditional properties of candy that is desired (Klacik Column 1 lines 5-13).

Claims 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanke (WO 97/06695) in view of Linden and Lorient (New Ingredients in Food Processing).

Hanke teaches that the candy product contains 26.1% sucrose (Example 1), however, is silent to 0.001-2% of a high intensity sweetener, such as aspartame in the confection, as recited in claims 35 and 36.

Linden and Lorient (Linden) discloses that aspartame has a sweetening power 200 times that of sucrose (Page 231).

It would have been obvious to modify the confection as taught by Hanke to include a bulk sweetener, such as aspartame as taught by Linden. One would have been motivated to add aspartame in order to get the same intensity of sweetness at a lower dosage than required by sucrose. It would have been obvious that the range of the bulk sweetener added would depend upon the bulk sweetener chosen and the amount of sweetness desired. One of ordinary skill in the art would have been further motivated to use a sweetness level similar to that as taught by Hanke, thus one would have been motivated to use $(26.1\% \text{ sucrose} / 200 = 0.13\%)$ 0.13% aspartame in the candy composition as taught by Hanke.

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Claims 1-3, 5-8, 13-16, 18-20, 30, 31, 33, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luhadiya (WO 97/03569) in view of Hanke (WO 97/06695).

Luhadiya teaches of a sugarless jacketed hard candy that is comprised of a hard candy shell and a hard candy core (Page 2 Summary of the Invention). Luhadiya teaches that the ratio of the weight of the core to the weight of the casing is between 10:90 and 90:10 (Page 4 paragraph 7), as recited in claims 2 and 3. Luhadiya teaches, page 3 paragraph 1, that the casing covers the entire core (i.e. the casing covers substantially all or more than 80% of the core) as recited in claims 30 and 31. Luhadiya teaches that both the hard candy core and shell contain less than 10% conventional candy additives, including colorings, flavor ingredients, and/or pharmaceutical active ingredients (Page 4 All). Luhadiya teaches, page 6 paragraphs 3-5, that the candy composition contains 0.8% flavoring as recited in claim 6. Luhadiya teaches, page 6 paragraphs 3-5, that the color of the candy core and the candy outer layer are different as recited in claim 18, by teaching only adding coloring to the candy core. Luhadiya teaches, page 4 paragraph 7, that the candy can be in an oval or elongated shape as recited in claim 34.

Luhadiya, however, is silent to the active ingredient as a cooling agent and to the amount of cooling agent in the shell and the jacket as recited in claim 1, to the shell as including about 0.01-2% menthol as recited in claim 5, to the candy as containing about 0.001-1% cooling agents as recited in claim 7, to the specific type and amounts of cooling agents in the candy as recited in claims 13, 14, and 15, and to the ratio of cooling agents in the core to the amount of cooling agents in the shell as recited in claims 19 and 20.

Hanke teaches of a boiled hard candy product that includes two distinct and discrete regions, a coolant region and flavor region. Refer specifically to Abstract, Page 3 Paragraph 3, Page 8 Paragraph 1, and Page 10 Paragraph 3. Hanke discloses that the outer coating composition is continuous and enrobes a core composition to create a centre-filled candy. Hanke teaches that the jacket can comprise of the coolant or flavor region and that the core can comprise the coolant or flavor region, as long as the candy

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composition includes at least one coolant region and at least one flavor region. Refer specifically to Page 3 Paragraphs 3 and 4. Hanke teaches the coolant composition as the jacket and the flavoring composition as the core (Page 10 paragraph 3, page 12 paragraph 2, page 13 paragraph 3, and Example 2). Thus, Hanke teaches that the coolant composition or jacket contains 0.01-15%, preferably 0.5-10% of the cooling agent and minor levels of flavoring ingredients (Page 7 Paragraphs 3 and 4, Page 8 Paragraph 1). Hanke teaches that the flavor composition or core contains preferably 0.4-1.5% flavoring and trace amounts of cooling agents (Page 10 Paragraphs 2 and 3). Therefore, the level of cooling agents in the jacketed or outer layer is greater than the level of cooling agents in the flavor composition or core in the candy composition, as taught by Hanke.

Regarding the active ingredient as a cooling agent and the types of cooling agents in the candy composition as recited in claims 1, 5, 7, and 13-15 Hanke discloses that the coolant composition comprises 0.1-0.15% cooling agents of which 0.01-15% are physiological cooling agents. Hanke discloses that the flavoring region comprises trace amounts of cooling agents. Thus, one of ordinary skill in the art would expect the total amount of coolant in the candy composition to include an amount of less than 1% (i.e. 0.1-0.15% + trace amounts). Hanke teaches cooling agents include menthol, carboxamides, eucalyptus, menthane esters and methane ethers and mixtures thereof. Refer specifically to Page 1 Paragraph 2 and Page 8 Paragraph 2, Page 5 paragraph 3, Page 7 Paragraph 3, and Page 10 Paragraph 2. Hanke teaches that cooling agents, such as 3-l-menthoxypropane-1,2 diol, N 2 3-trimethyl-2-isopropyl butanamide, and substituted p-menthane carboxamides are utilized from 0.01-15%. Refer specifically to Page 5 Paragraphs 3 and 4, Page 6 (All), Page 7 (All), and Page 8 Paragraph 2. Hanke teaches that the candy composition has good throat soothing properties and improved taste (Abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include 0.1-0.15% coolant agents, including menthol, 3-l-menthoxypropane-1,2 diol, N 2 3-trimethyl-2-isopropyl butanamide, and substituted p-menthane carboxamides, in the jacketed hard candy composition as taught by

Luhadiya, in view of Hanke. One would have been motivated to do so in order to gain the benefits of such cooling agents, such as throat soothing properties.

Regarding the relative amounts of cooling agents in the candy shell and the candy core as recited in claims 1, 5, 19, and 20, Hanke teaches of a candy composition with two regions, a favoring region and a cooling region. Hanke teaches that the jacket can comprise of the coolant or flavor region and that the core can comprise the coolant or flavor region. Refer specifically to Page 3 Paragraphs 3 and 4. Hanke teaches the coolant composition as the jacket and the flavoring composition as the core (Page 10 paragraph 3, page 12 paragraph 2, page 13 paragraph 3, and Example 2). Hanke teaches that the coolant composition contains 0.1-0.15% cooling agents and the flavoring composition contains trace amounts of cooling agents. It would have been obvious to one of ordinary skill in the art at the time the invention was made would have been motivated to select the embodiment, as taught by Hanke, in which the jacket was composed of the coolant composition and the core was composed of the flavoring composition, in order to first experience the physiological effects of the coolant (Page 7 paragraph 3) so that the flavor composition would be more greatly experienced.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Luhadiya (WO 97/03569) in view of Hanke (WO 97/06695), further in view of Klacik et al. (US 4452825).

Luhadiya teaches as the hard candy product, however is silent to the hard candy product as clear.

Klacik et al. (Klacik) discloses that it is desirable to have traditional or ordinary properties of a candy when making a candy, such as a clear composition and good texture (Column 1 lines 5-13). It would have been obvious to one skilled in the art at the time the invention was made to have modified the hard candy composition as disclosed by Luhadiya to include a clear composition in view of Klacik. One would have been motivated to do so because a clear composition is one of the traditional properties of candy that is desired (Klacik Column 1 lines 5-13).

Claims 1, 4-10, 13-15, 18-20, 30, 31, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aldrich (US 4517205) in view of Hanke (WO 97/06695).

Aldrich teaches of a jacketed hard candy composition, in which the jacket covers all of the shell (Column 2 lines 18-21 and Column 3 lines 28-31). Aldrich teaches that the hard candy is prepared with known procedures with known ingredients in the art, including corn syrup, sucrose, sugar alcohols, flavorings, colorings, and intense sweeteners (Column 3 lines 10-24). Aldrich teaches that relatively the same composition can be utilized to make the core that is utilized to make the shell (Column 3 lines 29-31) as recited in claim 4. Aldrich teaches that the product usually contains 0.5-1.5% flavoring as recited in claim 6. Aldrich teaches that the candy product has an elongated shape as recited in claim 34 (Figures 3 and 5). Aldrich teaches that the core and the outer layer comprise different colors as recited in claim 18 (Column 4 line 50 through Column 5 line 3).

Aldrich, however is silent to coolant in the candy composition as recited in claims 1 and 7, to the ratio of coolant in the jacket to the coolant in the core as recited in claims 1, 19, and 20, and to a particular type and amount of coolant as recited in claims 5 and 13-15.

Hanke teaches of a boiled hard candy product that includes two distinct and discrete regions, a coolant region and flavor region. Refer specifically to Abstract, Page 3 Paragraph 3, Page 8 Paragraph 1, and Page 10 Paragraph 3. Hanke discloses that the outer coating composition is continuous and enrobes a core composition to create a centre-filled candy. Hanke teaches that the jacket can comprise of the coolant or flavor region and that the core can comprise the coolant or flavor region, as long as the candy composition includes at least one coolant region and at least one flavor region. Refer specifically to Page 3 Paragraphs 3 and 4. Hanke teaches the coolant composition as the jacket and the flavoring composition as the core (Page 10 paragraph 3, page 12 paragraph 2, page 13 paragraph 3, and Example 2). Thus, Hanke teaches that the coolant composition or jacket contains 0.01-15%, preferably 0.5-10% of the cooling agent and minor levels of flavoring ingredients (Page 7 Paragraphs 3 and 4, Page 8 Paragraph 1). Hanke teaches that the flavor composition or core contains preferably

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0.4-1.5% flavoring and trace amounts of cooling agents (Page 10 Paragraphs 2 and 3). Therefore, the level of cooling agents in the jacketed or outer layer is greater than the level of cooling agents in the flavor composition or core in the candy composition, as taught by Hanke.

Regarding the active ingredient as a cooling agent and the types of cooling agents in the candy composition as recited in claims 1, 5, 7, and 13-15 Hanke discloses that the coolant composition comprises 0.1-0.15% cooling agents of which 0.01-15% are physiological cooling agents. Hanke discloses that the flavoring region comprises trace amounts of cooling agents. Thus, one of ordinary skill in the art would expect the total amount of coolant in the candy composition to include an amount of less than 1% (i.e. 0.1-0.15% + trace amounts). Hanke teaches cooling agents include menthol, carboxamides, eucalyptus, menthane esters and methane ethers and mixtures thereof. Refer specifically to Page 1 Paragraph 2 and Page 8 Paragraph 2, Page 5 paragraph 3, Page 7 Paragraph 3, and Page 10 Paragraph 2. Hanke teaches that cooling agents, such as 3-l-menthoxypropane-1,2 diol, N 2 3-trimethyl-2-isopropyl butanamide, and substituted p-menthane carboxamides are utilized from 0.01-15%. Refer specifically to Page 5 Paragraphs 3 and 4, Page 6 (All), Page 7 (All), and Page 8 Paragraph 2. Hanke teaches that the candy composition has good throat soothing properties and improved taste (Abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include 0.1-0.15% coolant agents, including menthol, 3-l-menthoxypropane-1,2 diol, N 2 3-trimethyl-2-isopropyl butanamide, and substituted p-menthane carboxamides, in the jacketed hard candy composition as taught by Luhadiya, in view of Hanke. One would have been motivated to do so in order to gain the benefits of such cooling agents, such as throat soothing properties.

Regarding the relative amounts of cooling agents in the candy shell and the candy core as recited in claims 1, 5, 19, and 20, Hanke teaches of a candy composition with two regions, a favoring region and a cooling region. Hanke teaches that the jacket can comprise of the coolant or flavor region and that the core can comprise the coolant or flavor region. Refer specifically to Page 3 Paragraphs 3 and 4. Hanke teaches the coolant composition as the jacket and the flavoring composition as the core (Page 10

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paragraph 3, page 12 paragraph 2, page 13 paragraph 3, and Example 2). Hanke teaches that the coolant composition contains 0.1-0.15% cooling agents and the flavoring composition contains trace amounts of cooling agents. It would have been obvious to one of ordinary skill in the art at the time the invention was made would have been motivated to select the embodiment, as taught by Hanke, in which the jacket was composed of the coolant composition and the core was composed of the flavoring composition, in order to first experience the physiological effects of the coolant (Page 7 paragraph 3) so that the flavor composition would be more greatly experienced.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aldrich (US 4517205) in view of Hanke (WO 97/06695), further in view of Luhadiya (WO 97/03569).

Aldrich teaches of a jacketed hard candy, as discussed above, however is silent to the product as sugar less.

Aldrich teaches that the candy product can be composed of sugar and/or sugar alcohols. Aldrich, however does not explicitly state that the product is sugarless. In the candy art, at the time the invention was made, a candy product produced with sugar alcohols was considered to be sugarless. Since Aldrich teaches that the candy product can be composed of sugar alcohols, one of ordinary skill in the art at the time the invention was made would expect that an embodiment as taught by Aldrich to be sugarless. Luhadiya teaches that sugar alcohol can be used in hard candy compositions, has less calories, is non carcinogenic, and can be used by diabetics (Background of the Invention). One would have been motivated to make the product as taught by Aldrich a sugarless product because sugar alcohol has less calories, is non carcinogenic, and can be used by diabetics.

Claims 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aldrich (US 4517205) in view of Hanke (WO 97/06695), further in view of Coia (EP 0431376 A1).

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Aldrich teaches of a jacketed hard candy with a hard candy core and a hard candy jacket as discussed above. Aldrich discloses that the hard candy formulation can include sugar and/or sugar substitutes. Aldrich, however, is silent to the candy composition as containing hydrogenated isomaltose.

Coia teaches of a hard candy confection comprised of hydrogenated isomaltose an active ingredient, and a flavoring agent which dissolves more slowly than similar formulations based on sugar, rendering a more suitable candy for dispensing an active ingredient, such as a cooling agent, over an extended period of time (Abstract and Example 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include hydrogenated isomaltose in the candy composition as taught by Aldrich in view of Hanke in order to make the candy more suitable for dispensing the cooling agent in view of Coia.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aldrich (US 4517205) in view of the combination of Hanke (WO 97/06695) and Luhadiya (WO 97/03569), further in view of Coia (EP 0431376 A1).

Aldrich teaches of a jacketed hard candy with a hard candy core and a hard candy jacket as discussed above. Aldrich discloses that the hard candy formulation can include sugar and/or sugar substitutes. Aldrich, however, is silent to the candy composition as containing hydrogenated isomaltose.

Coia teaches of a hard candy confection comprised of hydrogenated isomaltose an active ingredient, and a flavoring agent which dissolves more slowly than similar formulations based on sugar, rendering a more suitable candy for dispensing an active ingredient, such as a cooling agent, over an extended period of time (Abstract and Example 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include hydrogenated isomaltose in the candy composition as taught by Aldrich in view of Hanke in order to make the candy more suitable for dispensing the cooling agent in view of Coia.

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Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aldrich (US 4517205) in view of Hanke (WO 97/06695), further in view of Klacik et al. (US 4452825).

Aldrich teaches of a jacketed hard candy product that can contain coloring, however is silent to the hard candy product as clear as recited in claim 21 and to the hard candy jacket.

Klacik et al. (Klacik) discloses that it is desirable to have traditional or ordinary properties of a candy when making a candy, such as a clear composition and good texture (Column 1 lines 5-13). It would have been obvious to one skilled in the art at the time the invention was made to have modified the hard candy composition as disclosed by Aldrich to include a clear composition in view of Klacik. One would have been motivated to do so because a clear composition is one of the traditional properties of candy that is desired (Klacik Column 1 lines 5-13).

Claims 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aldrich (US 4517205) in view of Hanke (WO 97/06695), further in view of Linden and Lorient (New Ingredients in Food Processing).

Aldrich teaches that the candy product contains 45-70% sucrose (Column 3 lines 15-24), however, is silent to 0.001-2% of a high intensity sweetener, such as aspartame in the confection, as recited in claims 35 and 36.

Linden and Lorient (Linden) discloses that aspartame has a sweetening power 200 times that of sucrose (Page 231).

It would have been obvious to modify the confection as taught by Aldrich to include a bulk sweetener, such as aspartame as taught by Linden. One would have been motivated to add aspartame in order to get the same intensity of sweetness at a lower dosage than required by sucrose. It would have been obvious that the range of the bulk sweetener added would depend upon the bulk sweetener chosen and the amount of sweetness desired. One of ordinary skill in the art would have been further motivated to use a sweetness level similar to that as taught by Aldrich, thus one would

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have been motivated to use (45% sucrose/200 = 0.225% & 70% sucrose/200 = 0.35%) 0.225-0.35% aspartame in the candy composition as taught by Aldrich.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kelly Mahafkey
Examiner
Art Unit 1761

